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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,206	10/03/2003	Keith Colacioppo	9049	-2120

27752 7590 12/19/2006
THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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CINCINNATI, OH 45224

EXAMINER

DOAN, ROBYN KIEU

ART UNIT	PAPER NUMBER
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3732

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/19/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/678,206

Applicant(s)

COLACIOPPO ET AL.

Examiner

Robyn Doan

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Attachment A.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-11, 14, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fitzgerald (U.S. Pat. # 1,342,994).

With regard to claim 1, Fitzgerald discloses a hair treatment applicator (figs. 2, 3, and 5) comprising a handle (4) having a longitudinal axis and being in an elongated form; a plurality of retaining structures or heads (9) connected to the handle, each of the plurality of retaining structures having a base (11) and a plurality of tines (12) and being configured for holding hair treatment (soap, fig. 5), wherein the base facing in a direction substantially parallel to that of each other retaining structures and each of said plurality of tines extends substantially perpendicular from the base (see fig. 1); wherein each of the retaining structures being separated from each other by a separation volume (space between the two retaining structures). Fitzgerald fails to show the material of the handle being molded from one plastic material, however, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the material of the handle being molded from one plastic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis

Art Unit: 3732

of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. In regard to claims 4 and 15, Fitzgerald shows the plurality of tines in each retaining structures or heads being disposed on the base such that each tine being comprised within a first row of two or more tines (see attachment A) aligned in a direction substantially parallel to the longitudinal axis of the handle and within a second row of two or more tines aligned in a direction substantially perpendicular to the longitudinal axis of the handle (see attachment A). In regard to claims 5, 6 and 7, Fitzgerald fails to show the handle being integrally molded with each of the retaining structures and the hair treatment applicator being injection molded from a polyethylene material as a single piece. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the handle being integrally molded with each of the retaining structures and the hair treatment applicator being injection molded from a polyethylene material as a single piece, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. In regard to claim 8, Fitzgerald fails to show the shape of each of the plurality of tines being frusto-conical. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the shape of each of the plurality of tines being frusto-conical, since such a modification would have involved a mere change in the shape of the known component. A change in shape is generally recognized as being within the level or ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). In regard to claim 8, Fitzgerald fails to show each of the tines

Art Unit: 3732

having a proximal end having diameter from about .125 inches to about .3125 inches and a distal end having a diameter from about .0625 inches to about .375 inches, the height of each tine being from about .25 inches to 1 inches and the separation volume having a width of at least about .25 inches. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct each of the tines having a proximal end having diameter from about .125 inches to about .3125 inches and a distal end having a diameter from about .0625 inches to about .375 inches, the height of each tine being from about .25 inches to 1 inches and the separation volume having a width of at least about .25 inches, since such a modification would have involved a mere change in the size of the known component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). In regard to claim 14, Fitzgerald shows the plurality of retaining structures being connected to the handle in an arrangement which is bilaterally symmetrical across the longitudinal axis of the handle (see fig. 1).

Claims 1 and 12, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/69308.

With regard to claims 1 and 16, WO '308 discloses a hair treatment (translated abstract) and a hair treatment applicator (figs. 3 and 4) comprising a handle (1) having a longitudinal axis and being in an elongated form; a plurality of retaining structures or heads (at 5) connected to the handle, each of the plurality of retaining structures having a base (4) and a plurality of tines (5) and being configured for holding hair treatment,

Art Unit: 3732

wherein the base facing in a direction substantially parallel to that of each other retaining structures and each of said plurality of tines extends substantially perpendicular from the base (see fig. 4); wherein each of the retaining structures being separated from each other by a separation volume (10) and wherein the hair treatment being contained in each of the plurality of retaining structures (Applicant is noted that the hair treatment being dispensed from the opening 13 and into the retaining structure) and is not contained in the separation volume. WO '308 fails to show the material of the handle being molded from one plastic material, however, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the material of the handle being molded from one plastic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. In regard to claim 12, WO '308 discloses each of the plurality of retaining structures having at least one baffle (10) extending from the base. In regard to claim 13, the baffle being substantially parallel to the longitudinal axis of the handle (see fig. 4).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Deireitch, Doria, Vallis, Teigeler, Holden are cited to show the state of the art with respect to a scalp applicator.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'R. Doan', with a long horizontal flourish extending to the right.

Robyn Doan
Examiner
Art Unit 3732

Attachment A

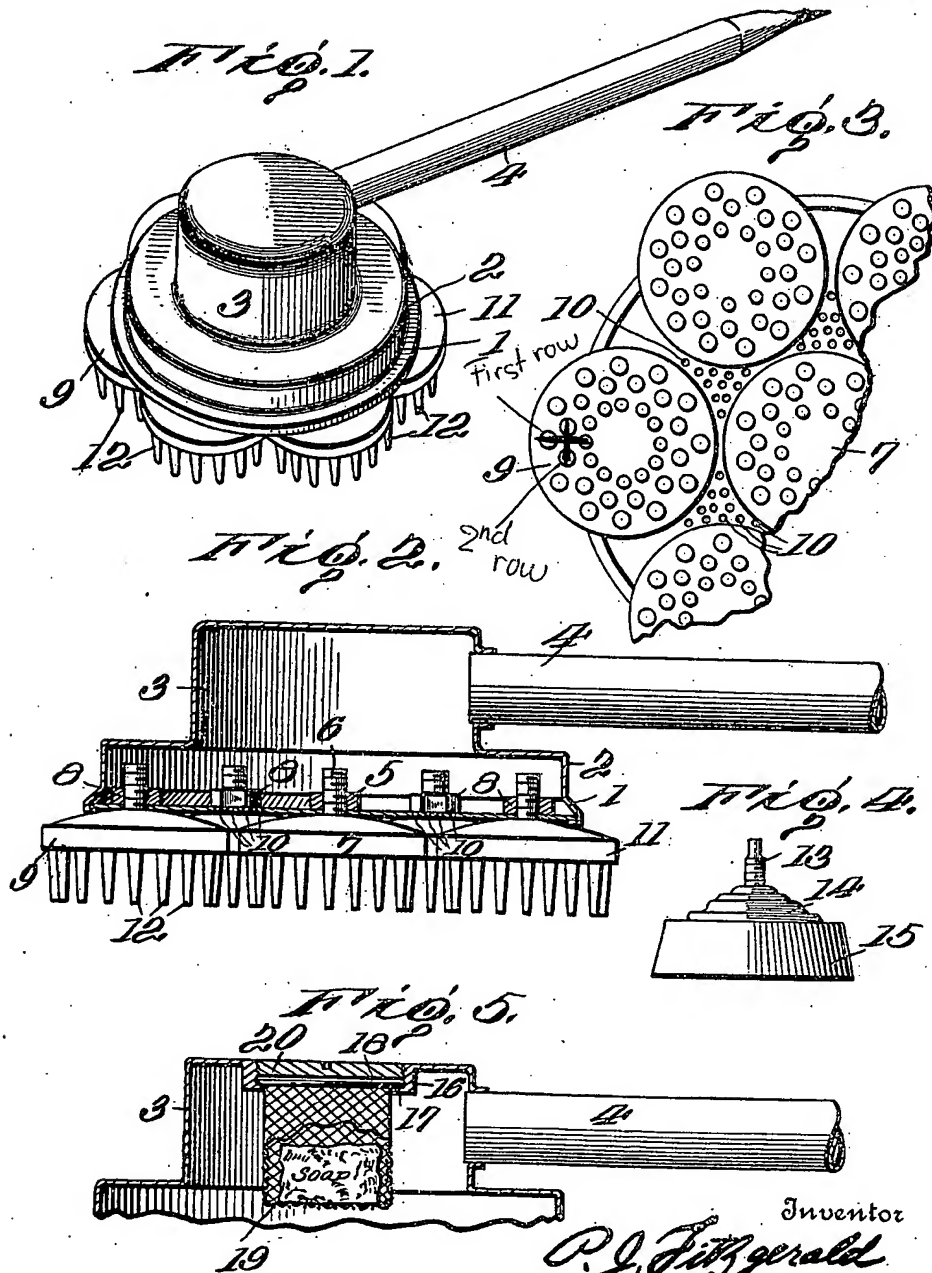
P. J. FITZGERALD.

BATH SPRAY.

APPLICATION FILED MAR. 11, 1920.

1,342,994.

Patented June 8, 1920.



Inventor

P. J. Fitzgerald

Attorneys